

FEB 26 2010

---

# SENATE CONCURRENT RESOLUTION

REQUESTING A STUDY OF THE CONTRACTING LICENSING LAWS OF OTHER STATES TO CLARIFY WHAT CONSTITUTES "INCIDENTAL AND SUPPLEMENTAL" WORK IN THE CONTEXT OF CONTRACTOR LICENSING.

1 WHEREAS, the Contractors License Board is vested with broad  
2 authority pursuant to section 444-4, Hawaii Revised Statutes, to  
3 issue licenses to contractors and to ensure that contractors are  
4 qualified to undertake the work for which they are licensed; and  
5

6 WHEREAS, pursuant to section 444-7, Hawaii Revised  
7 Statutes, the Contractors License Board classifies the types of  
8 licenses it issues as:

- 9
- 10 (1) General engineering contractor;
  - 11
  - 12 (2) General building contractor; and
  - 13
  - 14 (3) Specialty contractor; and
  - 15

16 WHEREAS, the Hawaii Supreme Court in *Okada Trucking Co.,*  
17 *Ltd. v. Board of Water Supply, City and County of Honolulu and*  
18 *Inter Island Environmental Services, Inc.*, 97 Hawai'i 450 (2002),  
19 made several significant holdings that clarified the treatment  
20 of bid proposals submitted by contractors on state and county  
21 projects; and  
22

23 WHEREAS, in *Okada*, the Hawaii Supreme Court held that a  
24 general contractor's bid for a Board of Water Supply booster  
25 station project was nonresponsive because it required work by a  
26 licensed plumbing (specialty) contractor, which was work that  
27 the general contractor was not authorized to perform under the  
28 general contracting licenses that it held; and  
29

30 WHEREAS, in *Okada*, the Hawaii Supreme Court also held that  
31 a general engineering or building contractor is prohibited from  
32 undertaking any work, solely or as part of a larger project,



1 that would require it to act as a specialty contractor in an  
2 area in which the general contractor was not licensed to  
3 operate; and  
4

5 WHEREAS, in *Okada*, the Hawaii Supreme Court noted that a  
6 specialty contractor, as opposed to a general contractor, is  
7 permitted to undertake work involving the use of crafts or  
8 trades for which the specialty contractor is not licensed, so  
9 long as the performance of the work in those crafts or trades is  
10 "incidental and supplemental" to the performance of work in the  
11 craft for which the specialty contractor is licensed; and  
12

13 WHEREAS, pursuant to section 444-8, Hawaii Revised  
14 Statutes, a specialty contractor is not prohibited from taking  
15 and executing a contract involving the use of two or more crafts  
16 or trades, if the performance of such work is in a craft or  
17 trade in which the specialty contractor is not licensed,  
18 provided that the work is "incidental and supplemental" to the  
19 performance of the work in the craft or trade in which the  
20 specialty contractor is licensed; and  
21

22 WHEREAS, section 444-8, Hawaii Revised Statutes, which  
23 allows specialty contractors to undertake "incidental and  
24 supplemental work" applies only to specialty contractors and not  
25 to general contractors; and  
26

27 WHEREAS, the Contractors License Board has applied the term  
28 "incidental and supplemental" (defined under section 16-77-34,  
29 Hawaii Administrative Rules, as work in other trades directly  
30 related to and necessary for the completion of the project  
31 undertaken by a licensee pursuant to the scope of the licensee's  
32 license) to general engineering contractors and to general  
33 building contractors who can perform incidental and supplemental  
34 work under the rule; and  
35

36 WHEREAS, current Hawaii statutory law in chapter 444,  
37 Hawaii Revised Statutes, is silent on whether a general  
38 contractor can perform incidental and supplemental work under  
39 its general contractor license; and  
40

41 WHEREAS, in the years since the *Okada* opinion, the  
42 Contractors License Board has permitted contractors, on several  
43 occasions, to submit bid proposals that failed to identify  
44 specialty subcontractors that would be engaged, even in



1 situations where the invitation for bids clearly indicated that  
2 the construction projects involved would require substantial  
3 amounts of specialty contracting work; and  
4

5 WHEREAS, in these cases, the Contractors License Board has  
6 ruled that the specialty contracting work required in these  
7 projects was merely "incidental and supplemental" to the  
8 licenses held by the bidding contractors; and  
9

10 WHEREAS, the Contractors License Board's application of the  
11 phrase "incidental and supplemental" appears to contradict the  
12 Hawaii Supreme Court's holdings in *Okada*; now, therefore,  
13

14 BE IT RESOLVED by the Senate of the Twenty-fifth  
15 Legislature of the State of Hawaii, Regular Session of 2010, the  
16 House of Representatives concurring, that the Legislative  
17 Reference Bureau is requested to conduct a study on how other  
18 states' contractor licensing laws define and address "incidental  
19 and supplemental" work; and  
20

21 BE IT FURTHER RESOLVED that the study be conducted for the  
22 purpose of providing information from the other states that will  
23 help the Legislature determine the extent to which the  
24 "incidental and supplemental" language in chapter 444, Hawaii  
25 Revised Statutes, should allow specialty contracting work to be  
26 performed by a contractor who is not licensed to perform that  
27 work; and  
28

29 BE IT FURTHER RESOLVED that as part of the foregoing task,  
30 the Legislative Reference Bureau consider the interests and  
31 protection of consumers; and  
32

33 BE IT FURTHER RESOLVED that the Legislative Reference  
34 Bureau is requested to report its findings and recommendations,  
35 including any proposed legislation, to the Legislature no later  
36 than twenty days prior to the convening of the Regular Session  
37 of 2011; and  
38

39 BE IT FURTHER RESOLVED that certified copies of this  
40 Concurrent Resolution be transmitted to the Director of the  
41



# S.C.R. NO. 118

1 Legislative Reference Bureau and Chairperson of the Contractors  
2 License Board.

3  
4  
5

OFFERED BY: Michelle Sidani

Mike Galt

Carol Johnson  
 John  
 Robinson  
 Clarence Richman  
 James Orvedo Jr.  
 Arid Y. Jaz  
 Zaynab Chum Alalash  
 Jeff  
 Will Syro  
 Norman Sokom  
 Madeline  
 Bumeris Kohl

